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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
PHB CATALYST GROUP, INC.,

Plaintiff,

- against -

RIVER TERRACE APARTMENTS, LLC,

Defendant.  
----- X

08 CV 02796 (DAB)  
ECF Case

JUN 26 2008

CHAMBER'S OF  
DEBORAH A. BATTS

**STIPULATION AND ORDER  
VACATING DEFAULT  
JUDGMENT AND  
DISCONTINUING ACTION**

WHEREAS, on or about March 17, 2008, plaintiff PHB Catalyst Group, Inc. ("Plaintiff") commenced this action by filing a summons and complaint (the "Complaint"); and

WHEREAS, the Complaint alleged that subject matter jurisdiction existed by virtue of diversity of citizenship pursuant to 28 U.S.C. 1332(a); and

WHEREAS, defendant River Terrace Apartments, LLC ("Defendant") did not appear in this action or answer the Complaint; and

WHEREAS, judgment by default was entered in Plaintiff's favor on or about May 28, 2008 (the "Default Judgment"); and

WHEREAS, on or about June 11, 2008, Defendant moved pursuant to Fed. R. Civ. P. 60(b) for an order vacating the Default Judgment and pursuant to Fed. R. Civ. P. 12(h)(3) for an order dismissing the Complaint, on the grounds that diversity jurisdiction was lacking insofar as Defendant is a citizen of New York (the "Motion"); and

WHEREAS, both parties wish to resolve the Motion on the terms hereof,


IT IS HEREBY STIPULATED AND AGREED by and among the undersigned counsel for all parties, that:

1. The Default Judgment is hereby vacated.
2. Pursuant to Fed. R. Civ. P. 41(a)(1), this action is hereby discontinued.
3. Plaintiff shall not hereafter commence an action in federal court asserting any of the claims being discontinued by this stipulation.
4. Counsel for Defendant hereby agrees to accept service of process on behalf of Defendant from Plaintiff's counsel in an action to be commenced by Plaintiff in New York State court against Defendant (the "State Court Action").
5. By executing this Stipulation and Order and by accepting service of process in the State Court Action, neither party waives any claims or defenses available to them other than Defendant's defenses based upon inadequate service of process.
6. This Stipulation and Order may be executed in counterparts, with each counterpart deemed an original.

PECKAR & ABRAMSON, P.C.  
*Attorneys for Plaintiff*

By: 

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June \_\_, 2008

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By: 

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SO ORDERED:



Honorable Deborah A. Batts  
United States District Judge